

**OFFICE OF TAX APPEALS
STATE OF CALIFORNIA**

In the Matter of the Appeal of:)
T. GILBERT) OTA Case No. 21088441
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OPINION

Representing the Parties:

For Appellant: T. Gilbert

For Respondent: Maria Brosterhous, Tax Counsel IV
Topher Tuttle, Tax Counsel III

For Office of Tax Appeals (OTA): Casey Green, Tax Counsel III

J. JOHNSON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, T. Gilbert (appellant) appeals an action by respondent Franchise Tax Board (FTB) proposing additional tax of \$2,455, an accuracy-related penalty of \$491, and applicable interest for the 2015 tax year.¹

Appellant elected to have this appeal determined pursuant to the procedures of the Small Case Program. Those procedures require the assignment of a single administrative law judge. (Cal. Code Regs., tit. 18, § 30209.1.)

OTA Administrative Law Judge John O. Johnson held an electronic oral hearing for this matter on July 26, 2022. At the conclusion of the hearing, the record was closed, and this matter was submitted for an opinion.

¹ An accuracy-related penalty was imposed at the IRS level based on a substantial understatement of income tax. FTB originally followed the IRS action in including an accuracy-related penalty in its proposed assessment; however, on appeal, FTB concedes that for California purposes, the underpayment of tax does not constitute a substantial understatement for purposes of determining whether the penalty applies at the state level. As a result, FTB agrees to remove the accuracy-related penalty.

ISSUE

Whether appellant has shown error in FTB's proposed assessment of additional tax for the 2015 tax year, which is based on federal adjustments.

FACTUAL FINDINGS

1. Appellant timely filed his 2015 California Resident Income Tax Return, reporting no tax owed.
2. The IRS audited appellant's 2015 federal tax return, which resulted in a final federal assessment of additional tax and an accuracy-related penalty. The IRS made several adjustments to appellant's taxable income, including: increasing appellant's gross receipts; disallowing certain Schedule C deductions for both cost of goods sold and vehicle expenses; disallowing a majority of appellant's claimed carryover loss from 2014; and adjusting appellant's self-employment tax.
3. The IRS notified FTB of the federal adjustments. FTB then made corresponding adjustments to appellant's 2015 California taxable income and issued a Notice of Proposed Assessment (NPA) which increased appellant's taxable income and resulted in an additional tax of \$2,455, an accuracy-related penalty of \$491, and applicable interest.
4. Appellant appealed the NPA, contending that he was attempting to resolve the issues with the IRS.
5. FTB responded by letter, requesting that appellant substantiate his position that he was working with the IRS and that his case was still open. When appellant failed to substantiate his position, FTB issued a Notice of Action affirming the NPA.
6. This timely appeal followed.

DISCUSSION

A taxpayer shall concede the accuracy of federal changes to the taxpayer's income or state where the determination is erroneous. (R&TC, § 18622(a).) It is well settled that a deficiency assessment based on a federal audit report is presumptively correct and that a taxpayer bears the burden of proving that the determination is erroneous. (*Appeal of Gorin*, 2020-OTA-018P.) Unsupported assertions are not sufficient to satisfy a taxpayer's burden of proof. (*Appeal of Bracamonte*, 2021-OTA-156P.)

Appellant concedes that the IRS's assessment for the 2015 tax year is final; however, appellant contends that he has receipts and other documents to support his position. A conference was held in this matter prior to the hearing to address what potential additional documents might be available. Appellant specifically mentioned he had receipts or other exhibits relating to "auto and cost of goods sold expenses." Appellant also mentioned exhibits related to the increase in gross receipts and mentioned that this documentation was provided to the IRS already. OTA allowed appellant time to provide these additional exhibits, and appellant thereafter provided profit and loss statements for 2014 and 2015.

Here, FTB based its proposed assessment of additional tax on the IRS's final audit determination for the 2015 tax year. The evidence in the appeal record indicates that the IRS has not revised or cancelled its determination, and its determination is final. As the federal determination has not been revised or cancelled, in order to prevail on this appeal, the burden is on appellant who must show error in FTB's proposed assessment or in the federal adjustments upon which FTB based its proposed assessment. Other than copies of correspondence between appellant and the IRS or FTB, appellant's only evidence on appeal are profit and loss statements for 2014 and 2015. These statements list amounts for income and expenses, but appear to be created by appellant and are not supported by any receipts or other substantiating evidence. These statements alone do not show error in the adjustments made by the IRS or FTB.


As shown above, the evidence and arguments provided by appellant on appeal do not show error in the federal adjustments or FTB's proposed assessment. Therefore, appellant has not shown error in the proposed assessment of additional tax.

HOLDING

Appellant has not shown error in FTB's proposed assessment of additional tax for the 2015 tax year, which is based on federal adjustments.

DISPOSITION

FTB's action is modified, as conceded by FTB on appeal, to remove the accuracy-related penalty. FTB's action is otherwise sustained.

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John O. Johnson
Administrative Law Judge

Date Issued: 10/13/2022